S.B.Civil Writ Petition No.275/2006
Kalyan Mal
vs
Narendra Singh & Ors.

Date of order : 13.11.2007.

HON'BLE MR. PRAKASH TATIA, J.

Mr.Ashok Patel, for the petitioner.
Mr.SR Soni, for the respondent.

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Heard learned counsel for the parties.

The petitioner is aggrieved against the order of the appellate court dated 6th Sept.,2005 by which the petitioner-defendant-tenant's appeal against the order of the trial court dated 21st March, 2005 determining the rent was dismissed by the appellate court.

According to learned counsel for the petitioner-defendant-tenant, the trial court heard the arguments for determination of rent and, thereafter, suo motu by order dated 5th Nov., 2004 directed for examination of the parties under Order 10 Rule 1 CPC. The case was fixed for evidence under Order 10 CPC, but on 11.2.2005 without recording the statements of the parties, the trail court heard the arguments for determination of the rent and passed the impugned order on 21st March, 2005 determining the rent. The petitioner-defendant-tenant being

aggrieved against the order of the trial court dated 21st March, 2005 preferred appeal and the appellate court dismissed the appeal vide impugned order dated 6th Sept., 2005. According to learned counsel for the petitioner when the trial court itself was of the view that statement of parties are required to be recorded before determination of the rent then the trial court could not have determined the rent without examination of the parties. It is also submitted that the defendant was paying the rent to the plaintiff on instruction of the plaintiff-respondent's brother Mahendra Singh. It is submitted that the petitioner-defendant-tenant already paid rent to Mahendra Singh and by determination of the rent, the petitioner-defendant-tenant will will to pay the rent twice.

I considered the submissions of learned counsel for the parties and perused the facts and the reasons given by the two courts below. So far as examination of the parties under Order 10 CPC before determination of rent is concerned, for that no objection was ever raised by the petitioner before the trial court, which is apparent from the copy of the order-sheet dated 11.2.2005 produced by the petitioner as well as from the order dated 21st March, 2005. Not only this, before 5th Nov., 2004, the court already heard the arguments for

determination of rent. In view of the fact that the petitioner did not raise any objection against the determination of the rent without recording statements of the parties, the petitioner straightway could not have raised objection in appeal or in writ. Therefore, the petitioner's objection against the determination of rent is rejected.

So far as determination of rent is concerned, it is an admitted fact that the plaintiff was entitled to receive the rent in view of the defendant's own contention in the written statement that the defendant-tenant was paying the rent to the plaintiff, may it be at the instruction of Mahendra Singh.

In view of the above reasons, the two courts below if reached to the conclusion that the tenant was paying rent to plaintiff and, therefore, plaintiff becomes landlord as per the definition given in the Rent Control Act, then I find no illegality in the finding recorded by the courts below.

In view of the above, I find no force in this writ petition and the same is hereby dismissed.

(PRAKASH TATIA), J.

c.p.goyal/-